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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/736,807	12/15/2003	Robert A. Piane JR.	PLANE 203-KFM	4138
10037	7590	12/11/2006	EXAMINER	
MILDE & HOFFBERG, LLP 10 BANK STREET SUITE 460 WHITE PLAINS, NY 10606			DONNELLY, JEROME W	
			ART UNIT	PAPER NUMBER
			3764	

DATE MAILED: 12/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/736,807

Applicant(s)

PIANE, ROBERT A.

Examiner

Jerome W. Donnelly

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.



JEROME DONNELLY
PRIMARY EXAMINER

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 4/05/2004 17-26-2004
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____

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The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Telle.

Telle discloses a device comprising a frame, said frame including as part of its structure a handle, said handle adapted for movement in two directions, a weight arranged on said frame at element (19) and coupled to said handle by a linkage.

Telle discloses the device also including a spring means (38) having two ends said spring means coupled to said handle through a linkage and further couple to said frame. Spring means (38) is equipped with valve members (47) for controlling resistance in two directions and thereby applying a spring force to the handle in a second direction in addition to the gravitational force of applied by the weight.

The examiner has not given weight to the claim of “a prescribed minimum value” since said value has not been claimed.

Claim 2 is so broad so as to read on weights stacked horizontally.

In regard to claim 3 and 4 it is known in the art to provide weights of varying weight to exercise devices as well as weight of the same weight.

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In regard to claim 5, the examiner reminds the applicant that to meet the claim language of claim 5 it is only necessary that the spring element 38 of Telle be removable.

In regard to claim 2, element 15 may be considered as a weight stack positionable between spring means 108-113. Applicant has not claimed that the springs be attached to the weights.

In regard to claim 11, the hydraulic spring (38) of Telle of a tension spring, elastic band, coil spring, compression spring and or a pneumatic spring is obvious in view of the disclosure of McFee of substituting various type of resistance spring in his device.

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 6 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The specification does not disclose a plurality of springs capable of being attached to said weights and said frame and spring being attach to said handle as claimed in claim 1.

Claims 14-16 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Webber in view of Allison.

Webber discloses a device comprising a frame, an exit guide, a cable (72) having a

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proximal end and a distal end one end being attached to a handle and one end being attached to weights.

Webber however does not include an additional resistance element comprising a spring means, coupled to said weights and a frame structure.

Allison teaches providing an additional resistance means in the form of a plurality of elastic cord means (22).

Given the above teaching the examiner notes that it would have been obvious to one of ordinary skill in art to provide an additional resistance in the form of resilient bands for the purpose of providing additional resistance to the device of Webber.

In regard to claim 15 note weight stack of both Webber and Allison.

In regard to claim 16, note hook 29 of Allison.

In regard to claim 18, note the plurality of cord 20, which are disposed on opposite sides of the center line (16) of Allison, which as broadly claim is on opposite sides of said weight stack.

Claims 7 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reyes in view of Koénig and further in view of Allison.

Reyes discloses the device of claim 7 substantially as claimed absent the weight means and the spring means having different spring constant.

The examiner notes that it would have been obvious to one of ordinary skill in the art

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include a weight means as disclosed by Koenig on the device of Reyes as a known resistance means in the art.

As to the device including spring means having different spring constants the examiner note that it is well known in the art to manufacture spring of different constants (in view of the spring 22) disclosed by Allison, for the purpose varying the resistance force exerted on the handle means of Reyes modified Supra.

Any inquiry concerning this communication should be directed to Jerome Donnelly at telephone number (571) 272-4975.

Jerome Donnelly

JEROME DONNELLY
PRIMARY EXAMINER

